IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL LODGING NO.973 of 2005
IN
NOTICE OF MOTION NO.2486 OF 2005
IN
SUIT NO.2142 OF 2005

1.Kesha Appliances Pvt. Ltd.)
having place of business at)
Anil Chambers, Metro Cinema)
Lane, Marine Lines, Mumbai-)
400 020 and its registered)
office at 56, Eros Apartments)
Nehru Place, New Delhi-100 019)
2.Mayank Credits Pvt. Ltd.,)
having place of business at)
Anil Chambers, Metro Cinema,)
Lane, Marine Lines, Mumbai-)
400 020, and its registered)
office at Maidan Garhi,)
Merhauli, New Delhi.)
3.Meghla Investments Pvt. Ltd.)
having place of business at)
Anil Chambers, Metro Cinema,)
Lane, Marine Lines, Mumbai-)
400 020, and its registered)
office at Maidan Garhi,)
Merhauli, New Delhi.)

4.M/s.Gagan Credits Pvt. Ltd.,)
having place of business at)
Anil Chambers, Metro Cinema,)
Lane, Marine Lines, Mumbai-)
400 020, and its registered)
office at Maidan Garhi,)
Merhauli, New Delhi.)
5.Paradise Credits P. Ltd.,)
having place of business at)
Anil Chambers, Metro Cinema,)
Lane, Marine Lines, Mumbai-)
400 020, and its registered)
office at Maidan Garhi,)
Merhauli, New Delhi.)
6.Gagan Polymers Pvt, Ltd.)
having place of business at)
Anil Chambers, Metro Cinema,)
Lane, Marine Lines, Mumbai-)
400 020, and its registered)
office at Maidan Garhi,)
Merhauli, New Delhi.)
7.Kesha Investments Pvt. Ltd.,)
having place of business at)
Anil Chambers, Metro Cinema,)
Lane, Marine Lines, Mumbai-)
400 020, and its registered)
office at Maidan Garhi,)

Merhauli, New Delhi.)

8.Modi Overseas Investments Ltd.)
having place of business at)
Anil Chambers, Metro Cinema,)
Lane, Marine Lines, Mumbai-)
400 020, and its registered)
office at Modi Tower, 98,)
Nehru Place, New Delhi.)

9.Modi Telefibers Ltd.,)
having place of business at)
Anil Chambers, Metro Cinema,)
Lane, Marine Lines, Mumbai-)
400 020, and its registered)
office at Modinagar,,)
Ghaziabad, U.P.)

10.Mrs. Yash Kohli,)
2, Hanuman Sharan, Bomanji)
Petit Road, Mumbai-400 036.)

11.Mr. A.K. Patankar,)
2/75, Rahimatbai Bldg., 434,)
Tardeo Road, Mumbai-400 034.)

12. Mr. Y.D. Sawant, 1/6, Shram)
Safiya Chawl, Devla Pada,)
Borivali(East),Mumbai-400 066)

13.Mr. Madan Keshav Thakur)
Om Sahakari Society, Bhante,)
Wadi,Room No.7,Near Telephone)

Office, Prabhadevi, Dadar)
(West), Mumbai-400 028.)
14.Mr. Pramod Kishanchand Khanna)
38, Raj Mahal, 1st Floor,)
Altamount Road,Mumbai-400 026)
15.Capt.Rajeev Kapur,)
5, Kothari Mansion, 1st Floor)
Opp. G.P.O., Fort,)
Fort, Mumbai-400 001.)
16.Mr. Bheesham Chopra, 204,)
Ankita Apts, Jankidevi)
Public School Rd., Mahada,)..APPELLANTS
Andheri (West),Mumbai-400 053)(ORI.PLAINTIFFS)

Versus

1.Royal Holdings Services Ltd.)..RESPONDENTS
The Corporation Trust Company,)
of Nevada, One East First)
Street, Reno, Nevada 89501.)
2.ABN Amro Asia Mauritius Ltd.,)
C/o. ABN Amro Bank N.V.,)
Custody Dept., Brady House,)
1st Floor, 14, Veer Nariman)
Road, Fort, Mumbai-400 023.)
3.Citigroup Global Market)
Citibank N.A. 77,Ramnord House)

Dr. A.B. Road, Worli,)
Mumbai-400 018.)

4.Goldman Sachs Investment,)
(Mauritius) Ltd.,)
C/o.Standard Chartered Bank)
Securities Services, 23-25,)
M.G. Road, Fort,Mumbai-400 001)

5.Seahaven Investments Mauritius)
Ltd., Deutsche Bank AG, Kodak)
House, D.N. Road, Fort,)
Mumbai-400 001.)

6.GMO Emerging Markets Trust)
Fund, Citibank N.A. Custody)
Services, 77, Ramnord House,)
Dr.A.B. Road, Worli,)
Mumbai-400 018.)

7.SpiceJet Limited (originally)
known as "Modiluft Limited))
carying on business at)
Domestic Airport (Private)
Airlines)1, B.Terminal,)
Santacruz, Mumbai-400 056.)

8.Mr. Ajay Singh, Director,)
SpiceJet Limited,)
carying on business at)
Domestic Airport (Private)
Airlines)1, B.Terminal,)

Santacruz, Mumbai-400 056.)
9.Cranes Consulting Pvt. Ltd.,)
204, Chalet, 30, Aga Abbas Ali)
Road, Ulsoor, Bangalore-560042)
10.Mr.Sanjay Malhotra,)
SpiceJet Limited)
carying on business at)
Domestic Airport (Private)
Airlines)1, B.Terminal,)
Santacruz, Mumbai-400 056.)
11.IL & FS Private Equity Trust)
A/c.Leverage India Fund.)
12.Trustees IVC Employee Welfare)
Trust, Both having their)
address at IL & FS Financial)
Centre, Plot C-22-G Block)
Bandra Kurla Complex,)
Bandra (East), Mumbai-400 051)
13.Karvy Computershare Private)
Ltd., Karvy House, 46, Avenue)
4, Street No.1, Banjara Hills)
Hyderabad-500 034.)..RESPONDENTS
)(ORI.DEFENDANTS)

Mr.N.H. Seervai, Senior Advocate with Mr. P.Gandhi, Ketan Parikh, F. Pooniwala i/b. Crawford Bayley & Co., for the Appellants.

Mr. Aspi Chinoy, Senior Advocate and Mr. S.V.Doijode i/b. M/s.Doijode Associates, for the Respondent No.1.

Mr. F.Divitre and Mr.S.V.Doijode i/b.Messrs Dojode Associates for Respondent No.7.

Mr. Janak Dwarkadas, Senior Advocate with Mr. Pravin Kumar Samdani and Mr. Anuj Basme i/b. Wadia Ghandy & Co., for the Respondent No.3.

Ms. S.Parikh i/b. M/s.Amarchand & Mangaldas & S.A. Shroff & Co., for Respondent No.4.

Mr. D.D. Madon i/b. A.R. Bhole for Respondent No.9.

Mr.Shyam Mehta i/b. Rustomji & Ginwala for Respondent No.10

Mr. D.J. Khambatta i/b. Amol Doijode for Respondent No.8

Mr. Snehal Shah i/b. Negandhi Shah & Himayutullah for Respondent Nos. 11 and 12.

CORAM: F.I. REBELLO &

DR.D.Y.CHANDRACHUD, JJ.

DATE : 29th September, 2005

JUDGMENT: (PER F.I. REBELLO, J.):

. This is an Appeal by the Plaintiffs aggrieved by the order of the learned Single Judge dated 26th September, 2005 refusing to grant ad-interim relief in view of the order passed in Notice of Motion No.2260 of 2005. That Motion has also been taken out by the plaintiff in the same suit. The learned Counsel has raised various contentions before us and has argued that the allotment of the equity shares in favour of Defendant No.7 is illegal, null and void. For that purpose the learned Counsel has placed reliance on Regulation No.3(c)(ii) of the Securities & Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. It has been pointed out that transfer of shares contrary to the said Regulation is a nullity at law. Reliance for that purpose has been placed on the judgment of the learned Single Judge of this Court in **M.Sreenivasulu Reddy and Ors. vs. Kishore R. Chhabria & Ors., 2002 (109) Company Cases 18.** It is pointed out that the judgment of the learned Single Judge was upheld

by Division Bench of this Court in **Shirish Finance & Investment P. Ltd. v. M. Sreenivasulu Reddy and Ors., 2002(109) Company Cases 913.**

. The suit filed by the plaintiffs inter alia seeks various reliefs. The main relief is for a declaration that the preferential allotment of 8,10,77,500 CRCPS by Defendant No.7 to Defendant No.1 in October, 2000 and the subsequent conversion thereof to equivalent equity shares to Defendant No.1 is in violation of the provisions of the Securities & Exchange Board of India (Substantial Acquisition of Shares & Takeovers) Regulations, 1997 and as such is clearly illegal, without the authority of law, contrary to law ab - initio null and void and non-est. There are consequential reliefs including for relief against the transferees subsequent by Defendant No.1 to defendant Nos.2, 3, 4, 5, and 6. The Motion taken out is supported by an affidavit of A.K. Patankar. It is contended that an article appeared on 29th August, 2005 in The Financial Express, Mumbai Edition that defendant No.7 through its new management has decided to raise US $ 300 million by way of either foreign convertible currency bonds (FCCBs) or dilution of shares of its promoters to fund its plans to expand its fleet of aircraft. It is pointed out that

allotment/acquisition of shares/ convertible debentures by defendant Nos. 1 to 6 to defendant Nos. 1, 8 to 12 is contrary to SEBI Regulations quoted earlier. Defendant Nos. 1 to 6 have no right to manage the defendant No.7 or take decision on its behalf or to raise funds for and on behalf of defendant No.7. Consequently in the Motion the injunction is sought to restrain the defendant No.7 and its officers, servants and agents from creating, offering, issuing and/or allotting any equity shares or convertible preference shares/debentures/warrants, Foreign convertible Currency Bonds (FCCBs), Global Depository Receipts (GDRs), American Depository Receipts (ADRs) or any other convertible instruments. Further injunction is sought to restrain the defendant Nos. 1 to 6 and 8 to 12 from exercising their purported membership rights in Defendant No.7 as set out in the prayer clause.

2. The learned Judge was pleased not to grant any ad-interim relief. It may be noted that from the averments in the plaint itself the appellants have disclosed that Appellant Nos. 1 to 9 are private companies incorporated under the provisions of the Companies Act, 1956 and have been promoted by Mr. S.K. Modi, who had also promoted respondent

No.7. They collectively hold 17% of the present paid up capital in Respondent No.7. Appellants 8 to 16 have invested in Respondent No.7 and held approximately 19,000 equity shares of the face value of Rs.10/- each. Appellant Nos. 10 and 11 are ex-employees of Respondent No.7 and presently in the employment of S.K. Modi. The Respondent No.1 is a company incorporated in Nevada, USA which is described as an Overseas Corporate Body (OCB). The Respondent No.1 was allotted 8,10,77,500 cumulative redeemable convertible preference shares (CRCPS) of the face value of Rs.10/- which Respondent No.7 thereafter converted into equity shares. As a consequence thereof Respondent No.1 had approximately 57% paid up equity of Respondent No.7.The CRCPS were issued on 20th February, 2001. Respondent No.1 has paid to Respondent No.7 US $ 17.5 million which was accepted by Respondent No.7.

3. The Respondents have drawn our attention to the fact that various suits have been filed by various companies associated with S.K. Modi before the Delhi High Court in which interim relief was sought. The plaintiffs therein are some of the appellants herein who had challenged the allotment of CRCPS by Respondent No.7 to Respondent No.1. The suits were filed sometime in the year 2000. Interim

reliefs have been rejected. There were also Company proceedings in which also the allotment was challenged but interim relief has been rejected. In other words the Modi group has been unable to get any relief. After rejection of those proceedings for interim relief the present suit was filed, for same or similar reliefs and some subsequent releifs.

4. The question is whether in the light of what is stated above this Court ought to interfere with the order of the learned Single Judge refusing to grant interim relief. In our opinion, the grant of ad-interim relief can be consideredif the parties approach the Court without undue delay. In the instant case nearly 5 years have elapsed since CRCPS were allotted by Respondent No.7 to the Respodent No.1 though subsequently sometime in 2001 the CRCPS have ben converted by Respondent No.7 into equity shares. The allotment of CRPCS was in October, 2000. The conversion is soon thereafter. When the resolution was passed for allotment of CRCPS by Respondent No.7, S.K. Modi was on the Board of Directors. Respondent No.1 was nowhere in the petition. Proceedings including suit by Companies associated with S.K. Modi were before the Delhi High Court where some of the present appellants were also plaintiffs. Interim reliefs in so far as CRPCS

were rejected. The conversion of CRCPS into equity shares took place on 27th/28th February, 2001. The suits were filed in 2001 and 2002 It was open to the Plaintiffs therein who are some of the appellants herein to have also challenged the allotment of equity shares. Ultimately it is only in the event the Court comes to the conclusion that the resolution of allotment in October, 2000 by defendant No.7 to defendant No.1 is null and void would the various consequential reliefs be considered.

5. In our opinion considering the long delay and merely because the defendant No.7 pursuant to its powers is seeking to raise some funds by itself cannot be a ground for the appellants herein to seek the interim relief as presently sought. That issue can be considered in the Motion which is pending before the learned Single Judge. The issue as to whether the allotment is contrary to SEBI Regulations and consequently null and void can be prima facie considered at the stage of hearing of the Motion.

. Considering the above, we do not think that there is any merit in this Appeal and consequently the Appeal is rejected. We make is clear that we

have not offered any opinion as to the merits of the matter as the issue is at large before the learned single Judge.

(F.I.REBELLO, J.)

(DR. D.Y. CHANDRACHUD, J.)